CUSTOMER WORKING GROUPS

Benefits to Directors of Public Forensic Laboratories

Kristine Hamann
Visiting Fellow
Dept. of Justice
Bureau of Justice Assistance

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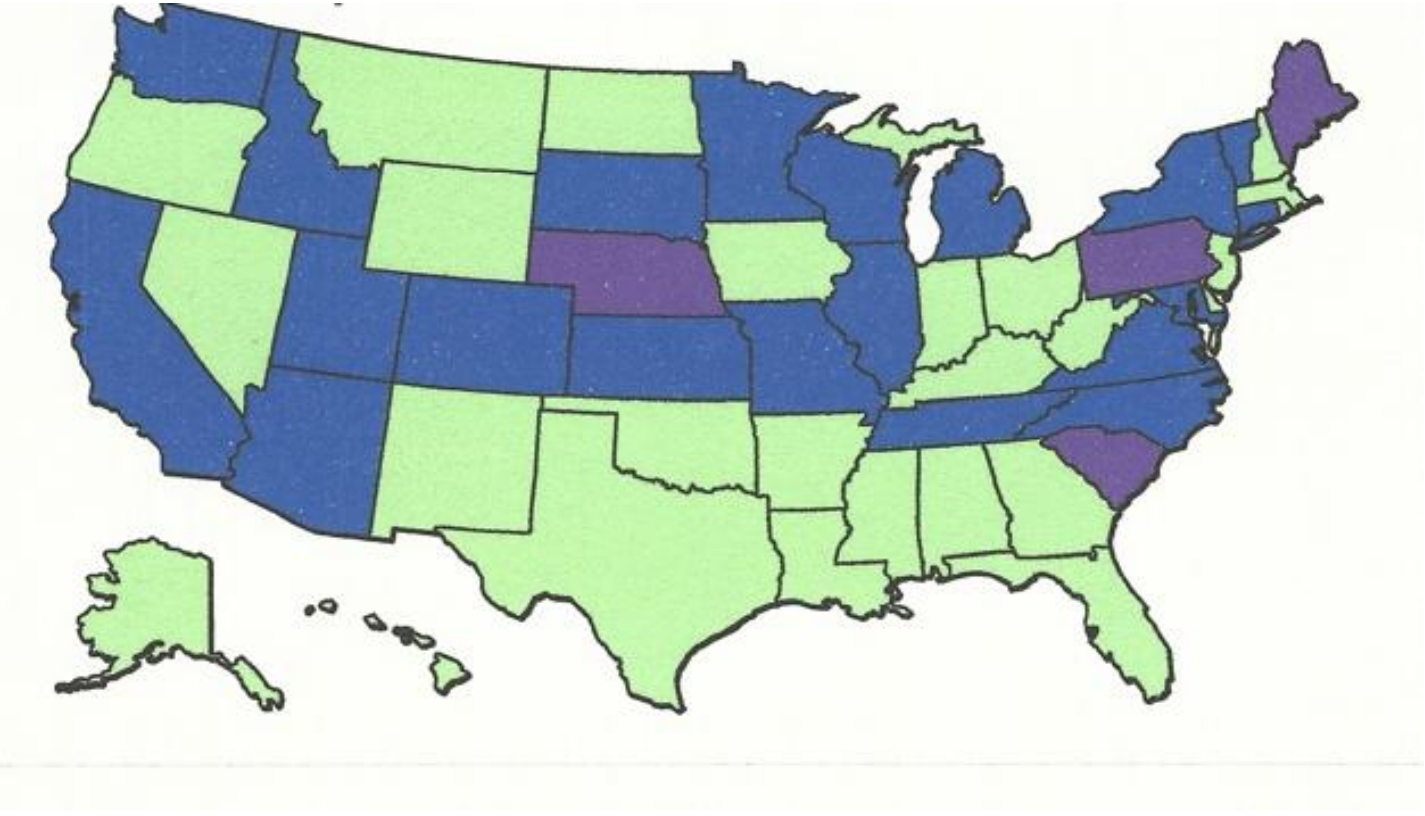
Statewide Best Practices Committees for Prosecutors

FORMATION

- Urban, suburban and rural offices
- Elected D.A.s and senior staff
- Not political
- Neutral leader

24 STATES INTERESTED



INITIAL MISSION

- Review wrongful convictions cases
- What went wrong?
- How to prevent it from happening again?

Get it right the first time.

FORENSIC EVIDENCE

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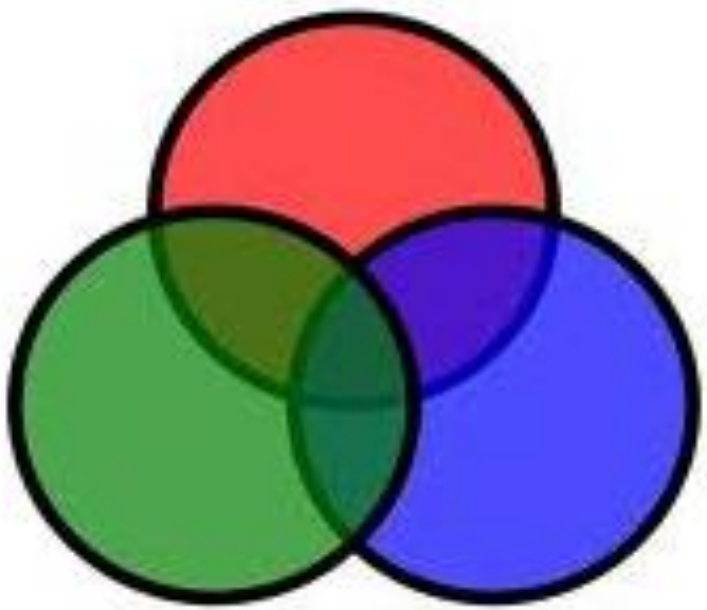
- Good news:
  - Growing reliance on forensic evidence
  - Higher standards
- Bad news:
  - Shrinking budgets

FORENSIC EVIDENCE

- Collaboration with customers



ISO REQUIREMENT Sec. 4.7

- Service to customer:
  - Cooperate
  - Clarify
  - Good communication
  - Feedback

ISO REQUIREMENTS
Sec. 4.8 and 4.9

- Policy for resolution of complaints
- Policy for nonconforming testing:
  - Notify customer
  - Recall work
  - Corrective action

ISO REQUIREMENT Sec. 4.10

- Improvement
  - Effectiveness of management
  - Quality policy
  - Analysis of data
  - Management review

STAKEHOLDER

VS

CUSTOMER

STAKEHOLDERS

- A person with an interest or concern in something.

WHO IS A STAKEHOLDER?

- Funding source – Legislature/Grants
- Criminal Justice System
- Police
- Prosecutors
- Judges
- Defense
- Victims and suspects

CUSTOMER

- A person or organization that buys goods or services from a store or other business.

WHO IS A CUSTOMER?

- Submitting agencies
- Requesting agencies

CUSTOMER WORKING GROUP

- Lab, Police, Prosecutors
- Senior members
- Not defense attorneys

CUSTOMER WORKING GROUP

- Regular meetings
  - In person
  - Conference call

DIFFERENT APPROACHES

- One police lab and many DA offices
- One lab and one DA office and many police departments
- One lab and customers are far away

BENEFITS

- Relationships
  - Who to call
  - Who can make a decision

BENEFITS

- Education: Customers learn how a lab works and learn about the science

TRIAGE

- What should be tested?
- What gets priority?
- Order of testing?
  - Fingerprints vs DNA?

LIAISON SYSTEM

- Police Evidence Liaison
- Prosecutor Evidence Liaison

BASIC LOGISTICS

- Getting a report to court
  - When
  - How
- When work is not needed

LAB PRESENTATION

- DNA results from CPW & found firearms cases – all tested
  - June 2007 – October 2010 (40 months)
  - 6,129 cases
  - 13,393 samples

LAB PRESENTATION

CPW Data Analysis Results:

- 82.6% insufficient quantity of DNA
- 0.8% match the suspect (*is or could be the source*)
- 11.8% of the cases a suspect exemplar was submitted

AGREEMENT REACHED

- Upon request only:
  - Liaison ADA contacts the NYPD Liaison Unit
- A suspect sample exemplar draft motion
- Homicide and assault testing methodology used

BACKLOG

- Share information
- Explain new procedures
- Manage expectations
- Discuss priorities

WHO DECIDES?

- Lab Director decides
- Input from customers
- Note – Rochester example

BACKLOG CONSEQUENCES

- Guilty people go free
- Innocent people are not uncovered
- Criminal justice system delayed
- Quality can suffer

EXONERATIONS

- Defendant pleads guilty
- Drugs tested 9 months later.

PROCEDURAL ISSUES

- When and where to include an uncertainty statement
- Notice of other paperwork, bench notes, raw data

NOTICE ON LAB REPORT

SUBJECT: [redacted]
DEFENDANT
January 03, 2011

EXAMINATION:

(CPL 190.30(2) Certification)

I, Lawrence W. Guisti, Jr., FS IV, LIMS Coordinator, hereby certify that I am a public servant in the employ of the New York State Police. I further certify this is the original of my report and contains the opinions and interpretations of the examination I performed in the above referenced case.

False Statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law.

Lawrence W. Guisti, Jr.

FS IV, LIMS Coordinator

This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.

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TESTIMONY

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- Coordination of testifying witnesses
- Feedback on witnesses
- Frye/Daubert hearings

NON-CONFORMITIES

- Complex
- Emotional
- Expensive
- Important to have pre-existing working relationships and protocols

NEW YORK EXAMPLES

- NYPD – Controlled substance – 2007
- NY State Police – Hair and Fiber - 2008
- NYPD – Controlled Substance - 2010
- Nassau – Entire laboratory – 2010
- DNA Laboratory - 2011

NONCONFORMITIES

- Intentional
  - Deliberate Falsification
  - Theft
- Sloppiness
  - Cutting Corners
  - Poor Training
  - Poor Supervision
  - Bad Morale

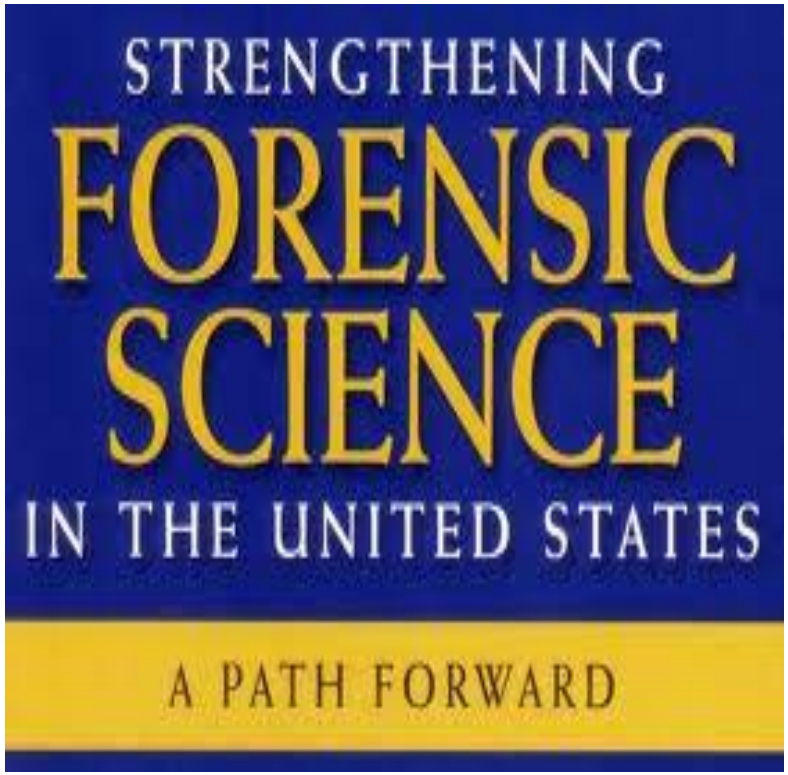
LAB SCANDAL

LAB OVERSIGHT

- ASCLD/LAB
- NYS Forensic Science Commission
- NY State Inspector General

NYS FORENSIC COMMISSION

NATIONAL ACADEMY OF SCIENCE



NATIONAL COMMISSION ON FORENSIC SCIENCE

3 ASCLD members

NEW YORK POST

May. 11, 2010, 8:05 AM

A lab-tech wreck for the NYPD

NYPD LABORATORY

- Controlled Substance Section
  - Largest in the country
  - Receives 135,000 cases
  - Tests over 40,000
  - Over 100 employees in the section

2010 NYPD LAB CASE

- Immediate notifications
  - ASCLD
  - DA
  - Forensic Science Commission
  - IG

PRE-EXISTING CWG

- Easy to convene
- Early notification
- Pre-existing relationships
- Unlike 2007 case

HOW TO RESPOND

- Laboratory's response
- Prosecutor's response

WHO MAKES THE DECISION?

- Notification to ASCLD and others:
  - Lab Director
- Recall project:
  - Lab Director
- Notifications to court and defense:
  - Prosecutor.

NYPD RECALL PROJECT

RECALL PROJECT

- Review problematic cases
- Review sampling of other cases
  - How big is the sample?
- How to review?
  - Retest
  - Technical review
  - Instrumental review

ROLE OF CWG

- Regular updates of on the Recall Project
- Re-testing finds new issues
- Review the Corrective Action
- How to find the cases where notice must be given?

FINDING THE CASES

NOTICE TO DEFENSE

- Exculpatory or Impeachment?
  - Reports confirmed?
- Pending cases and prior trial convictions

JOINT DA RESPONSE

- Same legal analysis
- Standard approach and letter

2010 NYPD LAB CASE

- Recall project
  - 20 months
  - 1 supervisor and 6 criminalists
  - 2554 cases reviewed
  - 350 retested
  - New type of technical review: Instrumental Data Review
- Found sloppiness

ASCLD/LAB

- Report to ASCLD included input of CWG
  - Report also goes to the Forensic Science Commission and the IG

IMPLICATIONS AT TRIAL

2010 NYPD LAB CASE

- Investigated Criminalist called as a witness
  - Took the 5th
- Lab Supervisor called as a witness
- Criminalist who retested the drugs was cross examined

NASSAU COUNTY LAB 2010

History of Problems

- 2003, 2005: non-conformances reported by ASCLAD/LAB
- 2006: *Probation* by ASCLAD/LAB
- 2007: non-conformances reported by ASCLAD/LAB
- 2004, 2008, 2009: non-conformances in self reports
- 2010: *Probation* by ASCLAD/LAB

NO CUSTOMER WORKING GROUP

- No designated way to notify the necessary parties
- No designated way to work out procedural issues, e.g. backlog

NASSAU COUNTY CRIME LAB HEARING

FULL LAB CLOSED (2/18/2011)

RED FLAGS

- Backlog
- Inadequate staffing
- Pressure from D.A.s to get work done quickly
- Inadequate scientific oversight of lab
- No customer working group

CUSTOMER WORKING GROUP

Kristine Hamann
khamann@bestpracticesforjustice.org

917-885-9065